

# ACLU of Virginia

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State Board of Elections  
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RE: Comments on Draft Residency Rules

Dear James:

Thank you for sending your draft regulations on residency. The ACLU of Virginia appreciates the enormous effort that went into compiling a comprehensive set of rules based on disparate input you have received from various sources, and we believe that the draft addresses many of the common issues associated with residency. However, we have several serious concerns that prevent us from giving our wholehearted support to this draft:

**A. Domiciliary Intent**

Section 2(b) of the draft states: “A person with specific intent to leave his current location at a fixed date in the future has not established the requisite intent for the purposes of establishing domicile.” We believe this statement to be incorrect for the following reasons:

1. It is inconsistent with the definitions of domicile. Sections 1(b) and (c), provide that “[h]ome is the place where a person dwells and which is the center of his domestic, social and civil life,” and that “[t]o acquire a domicile of choice in a place, a person must intend to make that place his home for the time at least.” It is certainly possible for a person to reside in a place for a fixed length of time, with an intent to leave at the end of that time – for example, under a temporary employment contract – and to make the place his “home” during the time that he resides there.

2. It is inconsistent with, or at least creates ambiguity when read alongside, Section 14, dealing with students. (See Part B, “Students,” below.)

3. It leaves some people ineligible to vote anywhere. Under Section 2(b), a person who has lived in Richmond all of her life, but plans to Charlottesville in three months, would not have the requisite domiciliary intent to register in Richmond. But neither could she register in Charlottesville, where she does not yet have an abode. Similarly, a person from Fairfax who moves to Abingdon for a fixed two-year employment contract could not register in Abingdon if he intends to return to Fairfax. But neither could he register in Fairfax, if he no longer has a residence there. *See Sachs v. Horan*, 252 Va. 247, 475 S.E.2d 276 (1996).

## **B. Students**

Section (14) provides: “If a college student intends to make his home in the jurisdiction where he is physically present for the purpose of attending college and has no specific intent to return to his former home after graduation, then he may claim the college jurisdiction as his domicile. A college student does not need specific intent to stay in the college jurisdiction beyond graduation in order to establish domicile there.” We have two concerns with this formulation.

1. Potential Ambiguity With Respect to Section 2(b). Read in isolation, Section (14) seems to allow a student who intends to move elsewhere (other than his former home) upon graduation to register where he goes to school. But under Section 2(b), such a student does not have the requisite domiciliary intent. Surely, a Virginia Tech junior who intends to move to New York when he graduates is no less a domiciliary of Blacksburg than his classmate who has no plans at all, but does not intend to remain in Blacksburg. We recommend that this ambiguity be resolved by removing Section 2(b).

2. Students Who Plan to Return to Their Former Home After Graduation. A student’s intent to return to his former locality after graduation does not negate her intent to make the college locality her home during the time she lives there. Such a student may be as fully engaged in the local government and community as a student who does not intend to return to his former home. Thus, we recommend that the phrase “and has no specific intent to return to his former home” be removed.

## **C. Requesting Additional Information**

We have several concerns about the draft’s provisions for general registrars to request more information about residency.

1. Mailing Address in Different Locality. Section 16(b) requires registrars to request additional information when “[t]he applicant provides a mailing address in a different county/city from his residential address.” But receiving mail outside a locality is not inconsistent with having a domicile within that locality, especially for college students, who may continue to use their parents’ addresses for mail. The determinative address is the place where the applicant resides, not where he receives mail. (As noted in Part D, we suggest that the application form be modified to make this clearer.)

2. Temporary Residences. Section (16)(e) permits the registrar to seek more information when the residence address is a “temporary address.” Consistent with Section (9), we suggest that homeless shelters be added to the list of addresses that are *not* considered temporary.

3. Supplemental Questions. There is some ambiguity about when the supplemental questions should be asked. In Section (16), each of the subsections specifically indicates whether the registrar should ask *either* the supplemental questions in Section (17) *or* for some other kind of information (e.g., a proper mailing address), or both. But Section (17)

provides that the registrar shall ask the supplemental questions “in addition to *any* information missing from the voter registration form.” We suggest that this sentence be changed to say: “Where authorized in § 16, the general registrar shall ask the following questions.”

Additionally, we object to supplemental question (17)(b): “Do you have a specific plan to move from this county/city at a fixed date in the future?” As noted above, a plan to move at a fixed date in the future does not negate a person’s domicile.

4. Limits on Requests for Additional Information. In order to ensure that additional information is requested only in the proper circumstances, we suggest changing the first sentence in Section (16) to say: “The general registrar shall ask a person to provide additional information in support of his registration application only in the following situations.”

5. Delays Caused by Requests for More Information. Requests for additional information may result in some voters, through no fault of their own, having their registration delayed until after the deadline. (For example, a person’s address may be incorrectly characterized by VERIS as non-existent. Or, a person may have no other address than a hotel, even though he is domiciled in the locality.) For that reason, we suggest that the regulations specify that if that application is ultimately approved, the registrant shall be registered as of the date that his application was initially received by the registrar or state-designated voter registration agency, or, if mailed, on the date of postmark.

**D. Change to the Voter Application Form**

There appears to be substantial agreement among Task Force Members that the Voter Registration Application Form could be modified to alleviate some of the more common errors. We suggest that in Part 3 of the form, “Residence (Permanent) Home Address” be changed to “Physical Residence Address in the Locality Where you Wish to Vote.”

We believe that the changes suggested above would result in a fairer, more consistent application of the residency requirement.

Sincerely,

Rebecca K. Glenberg